

UPDATE

Top 'take-aways' from the BVI Mourant Regulatory Conference 2024

On 15 October 2024, Mourant held its inaugural British Virgin Islands (BVI) Regulatory Conference at Maria's by the Sea Hotel & Restaurant, Road Town, Tortola. The conference covered current and upcoming issues affecting the financial services industry, including the Fourth and Fifth Round Mutual Evaluations, AML/CFT and international exchange of information and transparency. The speakers included leading experts from the former Ministry of Financial Services, Labour and Trade, the BVI Financial Services Commission, the BVI International Tax Authority and Mourant's regulatory, governance and consulting professionals.

1 Keynote address

The keynote address from the Honourable Lorna Smith, former Minister for Financial Services, Labour and Trade reiterated the BVI Government's commitment to supporting a robust regulatory regime, which has included enhanced anti-money laundering (AML) legislation and guidance to meet international standards.

Following the Fourth Round Mutual Evaluation Report (MER) of the BVI by the Caribbean Financial Action Task Force (CFATF), a new Virgin Islands Sanctions Unit has been set up, a new working group has been established to analyse financial crime and two new Crown Counsels responsible for AML matters have been recruited. Additionally, a National Coordinator has been appointed and a National Coordination Unit established. Two specialist firms have also been appointed to work with the Attorney General to assist the BVI Government in progressing with the National Action Plan.

Businesses were reminded of the importance of being aware of regulatory expectations. The BVI Government will take enforcement action in relation to any illegitimate financial activity and there will be no tolerance for abuse of BVI structures that could undermine the jurisdiction's reputation and trust.

2 The Fourth and Fifth Round Mutual Evaluations: The BVI Action Plan

Glenford Malone, Deputy Managing Director, BVI Financial Services Commission (FSC) and Mike Jones, Managing Director of Mourant Consulting discussed the 64 recommended actions from the Fourth Round MER and the corresponding BVI National Action Plan, published in February 2024, to address the recommended actions.

Fourth Round MER and National Action Plan

Mr Malone highlighted the significant progress made towards the meeting the National Action Plan which includes (among others):

- the updated National AML/CFT Policy and Strategy;
- the AML/CFT Implementation Unit and Sanctions Unit established in the Attorney General's Chambers;
- the Non-Profit Organisation Terrorist Financing Risk Assessment;
- legislative amendments to close the gaps identified in relation to technical compliance and to support effectiveness issues relative to supervision and law enforcement;
- enhanced supervisory risk management procedures and practices;
- the ongoing implementation of virtual assets service providers (VASP) regulatory regime;

- specific Money Laundering/Terrorist Financing/Proliferation Financing (ML/TF/PF) guidance for high-risk sectors, such as trust and corporate service providers (TCSPs), VASPs and investment business;
- the designation of the Registrar of Corporate Affairs as the central authority for the collection and verification of beneficial ownership information;
- the framework for a register of persons of significant control; and
- increased inspections and desk-based reviews on identified risk areas (such as customer due diligence (CDD), beneficial ownership, sanctions and risk assessments).

Mr Malone went on to list the following FSC priorities (among others) in continuing to meet the National Action Plan going forward:

- finalise the operational framework for collection and maintenance of beneficial ownership information;
- amend annual prudential returns to better capture information needed to understand relevant risks;
- finalise outstanding legislative amendments needed to address technical compliance and effectiveness;
- enhance the supervisory framework for designated non-financial businesses and professions (DNFBPs);
- enhance outreach, particularly to higher-risk sectors, such as TCSPs, VASPs and investment business;
- continue to focus on the VASP regulatory regime (including ongoing risk-based supervision and on-site compliance inspections) and develop additional outreach and guidance for VASPs focused on mitigating identified ML/TF/PF risks;
- strengthen the TF and PF sanctions regimes through enhanced and coordinated outreach based on revised Sanctions Guidelines; and
- increase investigations of legal persons/arrangements, where identified, with a view to enhancing prosecution and asset recovery.

Important timelines

The following key timelines were noted:

- November 2024 – First follow up report to CFATF (providing an update on recommended actions)
- December 2024 – Online beneficial ownership registration platform to be completed (to capture, maintain and verify beneficial ownership information)
- February 2025 - End of the One-Year Post Observation Period (for the FATF to review whether sufficient positive and tangible progress has been made towards increasing effectiveness)
- June 2025 – Consideration of Post Observation Period Report (following which either (i) no action plan will be required with continued monitoring by the CFATF or (ii) development of an action plan will be required with continued monitoring by FATF International Cooperation Review Group).

Fifth Round MER and what to expect

The Fifth Round MER assessments, which are just starting in the region, are about evidencing effectiveness, and the Regulator will therefore expect full cooperation from the industry. Businesses will need to be in technical compliance, with policies in place and trained individuals monitoring them, together with having the ability to evidence how a risk assessment is prepared and details of its ongoing review.

3 AML/CFT in practice: What does good look like?

Mourant Partner, Sara Galletly, chaired a panel session on AML/CFT good practice with Mike Jones, Nikesha Caesar, Chief Compliance Examiner, Financial Investigation Agency (FIA) and Tashel Martin-Jackson, Deputy Director, Compliance Inspection Unit, FSC.

The panel noted that understanding of risk and mitigating risk of ML, TF, PF and other financial crimes is of utmost importance and part of this process requires industry participants to update policies and controls immediately when risk assessment reports and/or typologies on the BVI are issued by the relevant authorities in the BVI.

Common problems areas identified via FSC inspections, being areas where industry members should focus their efforts, include inadequate risk assessments and application of a risk-based approach leading to flawed policies and procedures, a lack of implementation of the policies and procedures in place, including in relation to PEPs and enhanced CDD, a lack of understanding of when different levels of CDD are to be applied and gaps in effective sanctions screening procedures.

The FIA had identified similar issues in relation to DNFBPs, noting that the improvement in suspicious transaction reporting amongst the DNFBP Sector is a priority for the FIA.

The panel discussed the danger of industry being impeded by a lack of resources and the cost of ongoing training which are common issues for all jurisdictions.

The panel also discussed introduced business, which is an area of focus in the Fourth Round MER and the National Action Plan. In particular, it was noted that third party reliance relationships, including introduced business, need to be tested on an ongoing basis and that the BVI Anti-Money Laundering and Terrorist Financing Code of Practice (Revised 2020) specifically prohibits chains of reliance.

The panel also explored whether effectiveness is measured by international bodies, such as the CFATF and FATF, by reference to the enforcement which has been undertaken by a jurisdiction; effectively requiring money laundering prosecutions and the imposition of administrative penalties to evidence the effectiveness of an AML/CFT regime, though the overarching goal is compliance with the best standards. However, the more inspections undertaken, the more enforcements actions will follow. It was noted that enforcement action will focus on the nature of breach and the licensee's or the DNFBP's compliance history. Where it is not the first breach in relation to similar issue, it will be reviewed in a harsher light. However, the imposition of enforcement actions is undertaken on a case-by-case basis.

4 Sanctions update

Kisha Frett, Sanctions Coordinator at the Attorney General's Chambers and head of the Virgin Islands Sanctions Unit, assisted by Ciaran Johnston also of the Virgin Islands Sanctions Unit, presented an update on sanctions.

Virgin Islands Sanctions Unit

The functions and powers of the Governor of the Virgin Islands in relation to sanctions licensing, reporting and general oversight of sanctions implementation, are to be delegated to the Virgin Islands Sanctions Unit established in the Attorney General's Chambers. The Governor will remain the Competent Authority. Once official transition takes place, applications, reports and enquiries regarding sanctions should be directed to the Virgin Islands Sanctions Unit.

Sanctions monitoring and reporting

Industry was encouraged to familiarise themselves with the applicable sanctions legislation, including UK regulations and domestic legislation as it pertains to targeted financial sanctions relating to terrorism and terrorist financing and proliferation financing, and to remember that reporting is an important part of sanctions implementation.

Professionals must ensure to check for updates, screen databases for lists of sanctioned individuals, adhere to pertinent prohibitions and, where applicable, freeze funds and economic resources without delay and comply with relevant reporting obligations to the Governor and the FIA. Any report must contain all necessary information, together with all supporting information. Failure to comply with reporting obligations is an offence.

It is key to have effective controls and ongoing staff training programmes in place. Industry stakeholders should attend all events where updates are provided and conduct audits to ensure that policies are being followed and updated accordingly.

Specific and general licences

A specific or general licence gives permission to carry out an act that would otherwise be prohibited under the sanctions regulations. A specific licence is a licence that is used for a specific activity and issued to a specific person or entity. A general licence may be issued where you have many parties requiring the same specific activity.

Once a licence is issued, there will still be reporting requirements and the Governor has the power to vary or suspend the licence if these are not complied with.

When deciding whether to utilise a general licence, consider the relevant definitions, permissions and usage requirements as they relate to the specific circumstances, alongside seeking independent legal advice.

Compliance reporting form

Good and bad examples of compliance reporting forms were given. Common issues include incomplete fields, insufficient information, lack of evidence attached and illegible handwritten submissions. For fields where there is nothing to say, put N/A instead of leaving the field blank. It is also advisable to use clear language and include any relevant attachments.

For more information on this topic, please see our guide to [The sanctions regime in the British Virgin Islands](#).

5 The future of transparency and exchange of information in the BVI

Saraid Taylor, Mourant Counsel, moderated a panel session with La Toya James, Director, BVI International Tax Authority (ITA), Mourant Partner, Jennifer Jenkins and Louise Somers, Head of Tax Reporting and Client AML Services, Mourant Governance Services. The discussion focussed on current challenges in relation to requests for and exchange of information, with a particular focus on the Common Reporting Standard (CRS) regime and notices issued as a result of a request for information received under a tax information exchange agreement (TIEA) or the convention on mutual administrative assistance in tax matters (MAAC).

Common issues with reporting and classification

The ITA noted that a common issue is the misclassification of entities (primarily for holding company structures) which regularly results in over-reporting. This highlights to the ITA that there is a lack of understanding around the regimes which is problematic but also unnecessarily costly to the client.

The ITA pointed out that service providers need to understand their clients' business activities and how their clients are classified and reported across the various regimes (eg, CRS and economic substance). This is particularly important given the ITA are currently carrying out various matching exercises which involves matching the 300,000 entities incorporated with the BVI Registry of Corporate Affairs against other information sources (eg, funds regulated by the FSC, entities with a GIIN, economic substance information filed etc). Industry were strongly encouraged to review and ensure their entities' classifications across the various regimes is accurate, makes sense and is consistent. Classification advice should be sought when appropriate.

A high-level reminder was given of the type of information to be reported on the annual CRS/FATCA return to the ITA (including name, address, date of birth, TIN, account / capital balance); noting that these data points get exchanged around the world and it is therefore important to submit accurate, good quality data. Some recurring issues with CRS reporting include missing TINs, which must (almost) always be provided, and dates of birth. Service providers were reminded that all financial institutions are required to do a 'reasonableness' check on the self-certifications provided to them (ie, compare to the underlying AML/KYC documentation they hold). Good data matters, particularly as the BVI is now starting to apply penalties with the intention of improving the quality and effectiveness of reporting.

OECD review and new CRS Compliance Form

The BVI is currently being assessed on the effective implementation of the CRS and recently underwent an onsite inspection. It is expected that the results of the assessment will be received in 2025. In the previous 2022 report, the BVI was rated as partially compliant. Industry should expect CRS-related requests for information and compliance activities from the ITA to continue and increase. It was re-iterated that it is incumbent upon each of us as service providers to ensure the data we submit to the ITA is good quality data.

The ITA announced that a new CRS Compliance Form will be introduced in the first quarter of 2025 for financial institutions to file along with their annual CRS return. A high-level overview of some of the data points was provided which included, a summary of non-reportable accounts, details of any undocumented accounts or pre-existing accounts and particulars of the FI to demonstrate their implementation of the standard, including training of staff and details of policies and procedures. The expectation from the ITA is that service providers should already hold the information that will be required on this new form.

Tax information exchange request notices

If a notice is received, the entity must make sure that they understand what is being required of them and comply promptly. They should seek professional advice where necessary. There are serious consequences for failure to respond.

There is no right to appeal against a notice although judicial review is a formal avenue of challenge. The industry was reminded that there may be the possibility of refining the scope of the request (eg, if the date range goes beyond the five year mandatory document retention period in the BVI or if the subject matter is very broad) or to ask for an extension of time to reply. If the recipient of the notice considers this to be necessary, they should reach out to the ITA officers listed on the notice.

For more information on this topic, please see our update on [CRS in the BVI – Obligations and enforcement](#).

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